

Sam Brownback

United States Senator - Kansas

303 Hart Senate Office Building - Washington, DC 20510 - (202) 224-8950

News Release

FOR IMMEDIATE RELEASE
CONTACT BRIAN HART/AARON GROOTE

November 6, 2003

BROWNBACK STATEMENT ON FCC BROADCAST FLAG

WASHINGTON - U.S. Senator Sam Brownback today made the following statement regarding broadcast flag copyright concerns.

“Earlier this week the Federal Communications Commission voted to create the Broadcast Flag copyright protection scheme for digital television. Having now had the opportunity to review the text of the order I would like to commend the Commission for its efforts to improve a defective concept as originally proposed to the Commission.

“I had previously written to Chairman Powell to encourage him to ensure the FCC’s Broadcast Flag order is carried out in a pro-innovation, pro-competition, pro-consumer manner. I encouraged the inclusion of fundamental protections that would achieve these goals: functional regulation to protect Digital Television programming from piracy; a self-certification process that permits the private sector to determine for itself how best to achieve those functional requirements; and the creation of objective criteria that would be used by the FCC to enforce the regulation when appropriate.

“These core principles are included in this order to the greatest extent possible in an ‘interim’ technology approval process created by the Commission, and I am confident they will be cemented in a permanent self-certification process created through the FCC’s further notice. By requiring Broadcast Flag-compliant devices to be sold no later than the Summer of 2005, and given the consumer electronic industry’s assertions that an 18-month production cycle is needed in order to begin selling Broadcast Flat-compliant devices, the FCC will likely be forced to rely on its interim process for approving Broadcast Flag-compliant technologies by the end of January, 2004.

“I will watch closely, and strong oversight will be needed, to ensure that this interim process is the objective, pro-innovation, pro-consumer concept it purports to be on paper.

“I remain concerned, however, that the immediate impact of this order will be to deprive consumers of important freedoms, while requiring them to pay for that loss. Had the Commission created a final Broadcast Flag scheme before putting a scheme into effect, including the core functional regulatory and self-certification principles they continue to work on, these shortcomings may have been ameliorated.

“The Broadcast Flag as currently in effect will prohibit all unauthorized Internet redistribution of DTV content by Flag-compliant devices when so instructed by copyright owners, even when such activity is legal under copyright law today. This new rule is a rewriting of the fundamental balance between copyright and public access to information, as required by the Constitution’s Copyright Clause.

“Furthermore, DTV content recorded on physical media using Flag-compliant devices will not play on existing consumer electronics products and existing consumer electronics products will not work with new Flag-compliant devices, making countless existing products obsolete.

“The cost to consumers in terms of their freedom to legally use information - including news programming, which the FCC regulates with this order - as well as their pocketbooks cannot be overstated. These developments are especially disappointing given Hollywood’s recent testimony before the Senate Commerce Committee admitting that piracy of high-quality, high-value DTV content is not an immediate concern given existing Internet bandwidth and personal computing power available to the average consumer today.

“I am committed to working with Chairman Powell and our Commissioners, consumer groups and those industry stakeholders regulated under this order to ensure this interim Broadcast Flag technology approval process goes forward in an objective, competitive, and pro-consumer manner.”